

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



April 24, 1995

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20036

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Re: In the Matter of Unbundling of Local Exchange  
Carrier Common Line Facilities, RM-8614

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Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed, postage pre-paid envelope.

Very truly yours,

*Ellen S. LeVine*

Ellen S. LeVine  
Principal Counsel

ESL:dp

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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RM-8614

DOCKET FILE COPY ORIGINAL

In the Matter of )  
Unbundling of Local Exchange Carrier )  
Common Line Facilities )

**REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA  
AND PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The People of the State of California and the Public Utilities Commission of the State of California ("CPUC" or "California") hereby respectfully submit these reply comments in response to the Petition for Rulemaking filed by MFS Communications Company, Inc. ("MFS Petition"). We support the comments of other parties that have suggested the Federal Communications Commission ("FCC" or "Commission") deny the MFS Petition.

California recommends that the FCC deny the MFS Petition for two reasons. First, an FCC rulemaking on unbundling the local exchange carrier common line facilities is unnecessary and duplicative of several state proceedings. Second, MFS's suggestion of the FCC setting voluntary guidelines for pricing will confuse the jurisdictional separation between the FCC and state authorities. States have authority over the local exchange. The recommended rulemaking would intrude upon that authority.

## **A. The Rulemaking would be Unnecessary and Duplicative**

California agrees with the comments of the Maryland Public Service Commission and the Pacific Companies that the rulemaking MFS requests would be duplicative of state efforts to unbundle the local loop.<sup>1</sup> States recognize the importance of unbundled local loops for effective local exchange competition. For that reason, the states that have authorized local exchange competition are moving to unbundle the local loop. California plans to allow carriers to enter the local exchange service market in June 1995.<sup>2</sup> In order to ensure that new entrants can effectively compete, the CPUC is unbundling bottleneck facilities, such as the local loop, and intends to complete the unbundling process in our Open Access and Network Architecture Development Proceeding, Rulemaking (OIR) 93-04-003.

The rulemaking MFS requests is unnecessary because it does not propose to address any substantive technical issues. MFS concedes that technical standards do not currently represent an obstacle:

"loop unbundling will not require a significant development of new standards, hardware upgrades or software changes. In most cases, it will be in the best interest of all carriers if the incumbent LECs continue to use primarily the same technical

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1. Comments of the Maryland Public Service Commission, p.2, and Comments of the Pacific Companies, p. 1.

2. Decision No. 94-12-053, p. 5.

practices that they use today."<sup>3</sup>

MFS does ask for non-discriminatory treatment of the end users of interconnecting carriers by the incumbent LEC providing unbundled loops for installation and maintenance of service.<sup>4</sup> This may consist of applying existing state quality of service standards for end users to competitors, but would not require an FCC rulemaking.

**B. Voluntary Guidelines for Pricing the Unbundled Elements will Confuse Jurisdictional Issues**

MFS recommends that the FCC set voluntary pricing guidelines for the unbundled elements of the local loop. The MFS Petition recognizes that states have jurisdiction over the pricing of these elements and claims that by making the guidelines voluntary and subject to the approval of state regulatory bodies, the Commission would not intrude on the states' jurisdiction over intrastate charges.<sup>5</sup>

California believes that the guidelines will confuse the jurisdictional separation between the FCC and the states. States have been given the responsibility of setting the rates for intrastate services. Several states have already moved toward

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3. MFS Petition, p. 35.

4. MFS Petition, p. 42.

5. MFS Petition, p. 45.

unbundling the local loop and are in the process of determining pricing guidelines of their own.

In cases where the states have already determined pricing issues and the FCC guidelines are in conflict, it is unclear which set of rules would prevail. Competitors would argue to use the set of guidelines that they perceive to be advantageous. Carriers would have the incentive to forum shop between jurisdictions, leading to more litigation. Increased litigation of these issues will only lead to gridlock, delaying effective competition in the local loop.

We agree with the comments of the Pacific Companies that states are working to unbundle the local loop while at the same time balance several related issues.<sup>6</sup> The states must address the issues of universal service, network interconnection and the provision of optional support services by incumbent LECs to the incoming competitive carriers. The Maryland PSC determined that a mark-up was necessary to account for the LEC's shared and common costs of the unbundled elements.<sup>7</sup> We believe that states need the flexibility to resolve the complex issues surrounding local exchange competition. The MFS Petition attempts to isolate local loop unbundling from these complex issues.

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6. Comments of the Pacific Companies, p. 1.

7. Comments of the Maryland PSC, p. 6.

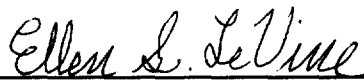
**C. Conclusion**

For the above stated reasons, California asks the FCC to deny the MFS Petition. California believes that an FCC Rulemaking regarding the unbundling of local exchange carrier common line facilities is unnecessary and duplicative and that voluntary pricing guidelines will delay competition in the local exchange.

Respectfully submitted,

PETER ARTH, JR.  
EDWARD W. O'NEILL  
ELLEN S. LEVINE

By:

  
Ellen S. LeVine


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State of California and the  
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of the State of California

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April 24, 1995

**CERTIFICATE OF SERVICE**

I, Ellen S. LeVine, hereby certify that on this 24th day of April, 1995 a true and correct copy of the foregoing REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA was mailed first class, postage prepaid to all known parties of record.

  
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Ellen S. LeVine